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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,928	04/13/2004	Rock A. Gagnebin	9173	4439
7590	09/20/2007		EXAMINER	
John M. Harrison 2139 E. Bert Kouns Shreveport, LA 71105			BRADEN, SHAWN M	
		ART UNIT	PAPER NUMBER	
		3781		
			MAIL DATE	DELIVERY MODE
			09/20/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/822,928	GAGNEBIN, ROCK A.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Shawn M. Braden	3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
  - 4a) Of the above claim(s) 18 and 19 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 04/13/2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 04/13/2004.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-17, drawn to trash can with suction on side, classified in class 220, subclass 495.
  - II. Claims 18-19, drawn to a trash can with a blower on top, classified in class 220, subclass 495.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are directed to related products. The related inventions are distinct if the (1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants. See MPEP § 806.05(j). In the instant case, the inventions as claimed The applicant has not disclosed the inventions as capable of use together, I has a liner (19) held open by creating a vacuum on the outside of the trash bag, II use a pressure applied to the inside of the trash bag, nowhere in the application has the applicant disclosed I and II are obvious variants. Furthermore, the inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants.

3. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art due to their

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recognized divergent subject matter, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with John Harrison on 08/30/2007 a provisional election was made without traverse to prosecute the invention of I, claims 1-17.

Affirmation of this election must be made by applicant in replying to this Office action.

Claims 18,19 are withdrawn from further consideration by the examiner, 37

CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-4,7,8,10-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Millasich (USPN 5,143,242).

7. With respect to claim 1, Millasich shows a liner (19) disposed for placement in said container and receiving a trash bag (15), wherein at least one dimension of said liner is smaller than the corresponding dimension of said container, to form an annulus (area of 21) between said liner and said container; at least one opening (20) provided in said liner, said opening communicating from the interior of said liner to said annulus; and a vacuum-producing device (18) provided on said container, said vacuum-producing device communicating with said annulus, wherein a vacuum is created in said

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liner and the trash bag (15) is deployed against said liner responsive to operation of said vacuum-producing device.

8. With respect to claim 2, Millasich shows at least one opening (20) comprises a plurality of openings provided in spaced-apart relationship with respect to each other in said liner.

9. With respect to claim 3, Millasich shows said container is defined by a container wall and a container bottom closing one end of said container wall and wherein said vacuum-producing device is provided on said container bottom (fig. 3).

10. With respect to claim 4, Millasich shows said at least one opening (20) comprises a plurality of openings provided in spaced-apart relationship with respect to each other in said liner (fig. 2).

11. With respect to claim 7, Millasich shows said at least one opening (20) comprises at least two slots provided in said liner (fig. 2).

12. With respect to claim 8, Millasich shows a perforated container lid (22) for removably closing said liner and said container and wherein said container is defined by a container wall, a container bottom (13) closing one end of said container wall and a container flange (clearly shown on 11) extending around the opposite end of said container wall and said liner is defined by a liner (19) wall, a liner (19) bottom closing one end of said liner wall, said liner bottom spaced (clearly shown in fig. 1) from said container bottom to define said annulus and a liner flange (near the periphery of 19) provided on the opposite end of said liner wall from said liner bottom, said liner flange engaging said container flange (by container sidewall) for removably receiving said

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container lid and wherein said vacuum-producing device is mounted on said container bottom (fig. 3).

13. With respect to claim 10, Millasich shows a container having a container wall, a container flange provided on one end of said container wall and a container bottom provided on the opposite end of said container wall from said container flange, a liner (19) disposed for placement inside said container; a liner flange provided on one end of said liner for engaging said container flange on said one end of said container wall when said liner is placed in said container and at least one opening (20) provided in said liner, a perforated container lid (22) for removably engaging said liner flange (by way of the sidewall) and closing said liner and said container, a liner (19) bottom provided in said liner, said liner bottom spaced from said container bottom to define an annulus (the space near 21), and an air blower (18) provided on said container bottom, said air blower having a blower suction extending through said container bottom and communicating with said annulus and a blower discharge located outside of said container (fig. 3), wherein a vacuum is created in said liner at the trash bag (15) responsive to operation of said air blower.

14. With respect to claim 11, Millasich shows said at least one opening (20) comprises a plurality of openings provided in spaced-apart relationship with respect to each other in said liner (fig. 2).

15. With respect to claim 12, Millasich shows a container having a perforated lid; a liner (19) disposed for placement in said container and receiving a trash bag, wherein the dimensions of said liner are smaller than the dimensions of said container to form an

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annulus between said liner and said container, at least one opening (20) provided in said liner, said opening communicating from the interior of said liner to said annulus; and an air blower (18) mounted on said container, said air blower having a blower suction extending through said container and communicating with said annulus and a blower discharge located outside of said container, wherein a vacuum is created in said liner at the trash bag (15) responsive to closing of said lid over said container and said liner and operation of said blower to transfer air from said liner and said annulus through said blower suction, to said blower discharge of said blower (fig.3).

16. With respect to claim 13, Millasich shows said at least one opening (20) comprises a plurality of openings provided in spaced-apart relationship with respect to each other in said liner.

17. With respect to claim 14, Millasich shows said container is defined by a container wall and a container bottom closing one end of said container wall and wherein said air blower (18) is provided on said container bottom and said suction of said air blower extends said annulus.

18. With respect to claim 15, Millasich shows said at least one opening (20) comprises a plurality of openings provided in spaced-apart relationship with respect to each other in said liner (fig. 2).

***Claim Rejections - 35 USC § 103***

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1,5,9,12,16,17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Millasich as applied to claim 1 or 12 in view of Brennan (USPN 6,554,151).

Millasich discloses the invention substantially as claimed. However Millasich does not disclose a vacuum-producing/blower devise in the container wall.

Brennan teaches the placement of a vacuum producing devise in the container wall with the vacuum represented by arrows shown on the cover in the same field of endeavor for the purpose of having the air entering from the side.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to move the vacuum producing devise to the sidewall of the container in order to set the container flat on the ground instead of the stand (23).

20. With respect to claims 9&17, the combination above further shows at least one opening (20) comprises a plurality of openings provided in spaced-apart relationship with respect to each other in said liner.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawn M. Braden whose telephone number is (571)272-8026. The examiner can normally be reached on Mon-Friday 9-6:30 est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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ANTHONY D. STASHICK  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700